IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 2106 /2005 **SINGLE BENCH**

PETITIONER : Jeet Ram Kurre, S/o Shri Ram Prasad Kurre, aged about 35 years, R/o Chandai, Tahsil-Sarangarh, District Raigarh (C.G.)

-VERSUS-

RESPONDENTS :

1. State of Chhattisgarh through the Secretary, Panchayat & Social Welfare Department, Mantralaya, D.K.S.Bhavan, Raipur (C.G.)
2. Deputy Director, Panchayat & Social Welfare, District Raigarh (C.G.)
3. Chief Executive Officer, Janpad Panchayat, Sarangarh, District Raigarh (C.G.)
4. Gram Panchayat Chandai through its Sarpanch, Chandai, Tahsil-Sarangarh, District Raigarh (C.G.)
5. Sarpanch, Gram Panchayat Chandai, Tahsil-Sarangarh, District Raigarh (C.G.)
6. Shri Bhojram Chouhan, Assistant Gram Panchayat Officer, Gram Panchayat Chandai, Tahsil-Sarangarh, District Raigarh (C.G.)

P.R. No. 2275/05 Presented by Shri Ramesh Verma dated 24-5-05

RECEIVED COPY. 24/5/05 CLERK HIGH COURT BILASPUR

WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION

The above named petitioner most humbly and respectfully begs to submit as under: -

1. PARTICULARS OF THE PETITIONER(S):

   As per the cause title.

2. PARTICULARS OF THE RESPONDENT(S):

   As per the cause title.

3948/05 46/5/05

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.2106/2005

Petitioner	:	**Jeet Ram Kurre**
		-Versus-
Respondents	:	**State of Chhattisgarh & others**

Post for order on 14th November, 2006.

Sd/-
Satish K. Agnihotri
Judge

(19)

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Writ Petition No.2106/2005

Petitioner : Jeet Ram Kurre

-Versus-

Respondents : State of Chhattisgarh & others

Shri Rajeev Shrivastava, Advocate for the petitioner.

Shri V. V. S. Moorthy, Deputy Advocate General for the respondents No. 1 and 2.

Shri Sandeep Dubey, Advocate for the respondent No. 4 and 5.

None for the respondents No. 3 and 6.

ORDER

(14th November, 2006)

This order of the Court is passed by Justice **Satish K. Agnihotri**.

1. The petitioner, in the present petition, impugns the order dated 19.4.2005 (Annexure P/12) passed by the respondent No.2 whereby the respondent No.6 was appointed as Secretary in place of the petitioner under the provisions of Section 69(1) of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (for short 'the Act 1993') and the order dated 25.4.2005 (Annexure P/13) passed by the respondent No.5 terminating the service of the petitioner from the post of Panchayat Karmi from Gram Panchayat Chandia.

2. The facts in nutshell are that the petitioner was appointed as Panchayat Karmi of Gram Panchayat, Chandia vide order dated 15.11.1995 (Annexure P/1) in accordance with law. Subsequently vide order dated 19.12.1995 (Annexure P/2) the petitioner was declared as Secretary under the Provisions of Section 69 (1) of the Act, 1993. The petitioner was handed over

the charge of the post of Secretary on 20.12.1995. The Gram Sabha in its resolution dated 18.2.2005 resolved to remove the petitioner from the post of Panchayat Karmi and removal letter was accordingly issued on 25.2.2005. On 28.2.2005 the respondent No.2 appointed Shri Firtu Ram Bareth as Secretary of the Gram Panchayat. On the representation dated 3.3.2005 (Annexure P/5) made by the petitioner, the respondent No.2 directed the Panchayat and Social Organizer to conduct internal enquiry and submit a report. On receipt of an internal report dated 19.3.2005 of the Panchayat and Social Education Organizer, the respondent No.2 quashed the order dated 25.2.2005 removing the service of the petitioner from the post of Panchayat Karmi and allowed the petitioner to perform his duties as Panchayat Karmi. Pursuant to the order dated 4.4.2005 passed by the respondent No.2 the petitioner joined on the post of Panchayat Karmi on 7.4.2005.

3. The respondent No.2 appointed the respondent No.6 as Secretary of Gram Panchayat under the provisions of Section 69 (1) of the Act, 1993 vide order dated 19.4.2005 (Annexure P/12) which is impugned herein also. Being aggrieved, the petitioner challenged the validity of the order dated 19.4.2005 separately in W.P.No. 1931/2005 also.

4. Shri Rajeev Shrivastava, learned counsel appearing for the petitioner challenged the validity of the order dated 25.4.2005 whereby the petitioner was removed from the post of Panchayat Karmi on the sole ground that the impugned order was not passed in accordance with the statutory provisions as prescribed in Rule 7 of the Madhya Pradesh Service

(Discipline and Appeal) Rules, 1999 (for short " Rules, 1999"). The respondents No. 4 and 5 have not conducted any enquiry as envisaged in Rule 7 of the Rules 1999. Thus, the petition deserved to be allowed with cost.

5. Shri Sandeep Dubey, learned counsel appearing for the respondents No. 4 and 5, on the contrary, submits that the petition is not maintainable on the ground of availability of the alternative remedy. Secondly the principles of natural justice as envisaged in Rule 7 of the Rules 1999 has been complied with by issuing a show cause notice to the petitioner which has been duly replied to by the petitioner. Return of the respondents No. 4 and 5 reads as under:-

> "After receipt of the complaints show cause notice were issued to the petitioner and he has submitted return which is annexed herewith R-5/2 and thereafter a meeting of Gram Sabha was called and a resolution has been passed with full majority and after the resolution is passed the petitioner has been removed, copy of resolution is annexed herewith Annexure 5/3 which is perfectly legal and justified and no malafide can be attributed against the answering respondent."

6. Shri V. V. S. Moorthy, Deputy Advocate General appearing for the respondents No. 1 and 2 adopts the submission of learned counsel for the respondents No. 4 and 5.

7. The respondents No. 3 and 6 did not appear despite due service on them.

8. After hearing learned counsel for the parties and perusing the records appended to the petition as also to the return. It is found that the mandatory requirement of Rule 7 of the Rules,

(421)

1999 has not been complied with. The Gram Panchayat has removed the petitioner without conducting the formal enquiry after framing the definite charges on the basis of the allegation and communicating thereafter such charges and statements to the petitioner as prescribed in Sub-Rule (2) of the Rule 7 of the Rules, 1999. Rule 7 of the Rules, 1999 reads as under:-

"7. **Procedure for imposing major penalties**.-(1) No order, imposing on a member of the Panchayat Service, any of the penalties specified in clause (iv) to (via) of rule 5 shall be passed except after a formal inquiry is held as far as may be, in the manner hereinafter provided.

(2) When an order for formal inquiry has been made, the disciplinary authority shall frame Definite charges on the basis of allegations and shall communicate such charges, alongwith the statement of the allegations, to the member of the Panchayat Service and also require him to submit, within such time as may be specified a written statement of defence and also to state whether he desires to be heard in person.

(3) The person against whom inquiry is to be held shall, for the purpose of preparing toe defence, be permitted to inspect and take extracts from such records as he may specify:

Provided that such permission may be refused if, for reasons to be recorded in writing, in the opinion of the Enquiry Officer such records are not relevant for the purpose or it is against the public interest to allow his access thereto.

(4) On receipt of the written statement of defence or if any such statement is not received within the time specified, the disciplinary authority may himself enquire into such of the charges as are not admitted or appoint an Enquiry Officer to hold the inquiry and forward to him his report and, if advised, his recommendation alongwith all the inquiry papers.

(5) The disciplinary authority may nominate any person to present the case in support of the charges before the Enquiry Officer. The member of the Panchayat Service may present his case with the assistance of any other Panchayat Servant of

State Government Servant approved by the Enquiry Officer but may not engage a legal practitioner for the purpose, unless the person nominated by the disciplinary authority as aforesaid is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case so permits.

(6) If the servant of the Panchayat Service desires to be heard in person, fie shall be so heard. If he so desires or if the disciplinary authority so directs, an oral enquiry shall be held by the Enquiry Officer. At such inquiry evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross examine the witness, to give evidence in, person, to produce documentary evidence, if any, and to have such witness called as he may wish:

Provided that the Enquiry Officer may, for reasons to be recorded in writing, refuse to call a witness.

(7) At the conclusion of the inquiry, the Enquiry Officer shall prepare a report of the inquiry, recording his findings on each of the charges together with reasons therefore.

(8) The proceedings conducted against the persons charged shall contain a sufficient record of

(i) the charges framed against such person and the statement of allegations;

(ii) the written statement of defence if any;

(iii) the oral evidence taken in the course of the inquiry;

(iv) the documentary evidence considered in the course of the inquiry;

(v) the orders, if any, made by the Enquiry Officer or the disciplinary authority as the case may be with regard to the inquiry;

(vi) a report setting out the findings on each charge and the reasons therefore.

(9) the Enquiry Officer, if he is other than the disciplinary authority, shall submit the records of the proceedings mentioned in clause (8) above to the disciplinary authority without recommendation relating to the penalty to be imposed. The disciplinary authority shall consider the

(123)

record of the enquiry and its findings on each charge, having regard to the findings on the charges and the record (if the proceedings) if he is of the opinion that any of the penalties specified in clauses (iv) to (vii) of rule 5 should be imposed, it shall furnish to the person charged a copy of the report of the Enquiry Officer, and where the disciplinary authority is not the Enquiry Officer a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Enquiry Officer.

(10) The disciplinary authority shall consider the representation, if any, made by the person charged in response to the notice and determine the penalty, if any, should be imposed and shall pass appropriate order on the case.

(11) The orders passed by the disciplinary authority shall be communicated to the member of the Panchayat Service, who shall also be supplied with a copy of the report of the Enquiry Officer an where, disciplinary authority is not the Enquiry Officer, a statement of its findings together with the brief reasons for disagreement, if any, with the findings of the Enquiry Officer, unless they have already been supplied to the person charged."

9. The Supreme Court in the case of **Radhey Shyam Gupta Vs. U. P. State Agro Industries Corporation ltd. and another** {(1999) 2 SCC 21} has observed in para 34, as under:-

"34. But in cases where the termination is preceded by an enquiry and evidence is received and findings as to misconduct of a definitive nature are arrived at behind the back of the officer and where on the basis of such a report, the termination order is issued, such an order will be violative of the principles of natural justice inasmuch as the purpose of the enquiry is to find out the truth of the allegations with a view to punish him and not merely to gather evidence for a future regular departmental enquiry.

In such cases, the termination is to be treated as based or founded upon misconduct and will be punitive."

10. This Court in **Dhaluram Kosaria Vs. State of C.G. & others** { 2006 (2) CGLJ 186 }, **Beegan Ram Vs. State of C.G. & others** { 2006 L.T. (C.G.) 41}, and **Prakash Chand Soni Vs. State of C.G. & others** { 2005 L.T. (C.G.) 151 } held that the non compliance of the statutory provisions and denial of principles of natural justice tantamount to infraction of not only the provisions of Rule 7 of the Rule 1999 but the provisions of Article 311(2) of the Constitution of India also. The order of removal being penal in nature, visiting with civil consequences, cannot be passed without holding the enquiry in accordance with the elaborate provisions as prescribed in Rule 7 of the Rules, 1999.

11. It is thus clear that the respondents No. 4 and 5 have not followed the statutory provisions of law before imposing the major penalty of removal of the petitioner from the post of Panchayat Karmi.

12. With regard to the availability of the alternative remedy it is well settled that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of the compulsion. In the present case the facts are not disputed. The entire case rests on the infraction of constitutional protection prescribed under Article 311 (2) of the Constitution of India and non-application of the statutory provisions, as such the alternative remedy may not be a proper forum. The Supreme Court in the case of **Harbanslal Sahnia**

and another Vs. Indian Oil Corporation Ltd and others {(2003) 2 SCC 107} in para 7 has held as under:-

> "7. .....suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction of the vires of an Act is challenged....."

13. The Supreme Court in **State of H.P. and others Vs. Gujarat Ambuja Cement Ltd. and another** {(2005) 6 S.C.C. 499}, in para 22 held as under:-

> "22. If, as was noted in Ram and Shyam Co. v. State of Haryana[31] the appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility. In the instant case the writ petitioners had indicated the reasons as to why they thought that the alternative remedy would not be efficacious. Though the High Court did not go into that plea relating to bias in detail, yet it felt that alternative remedy would not be a bar to entertain the writ petition. Since the High Court has elaborately dealt with the question as to why the statutory remedy available was not efficacious, it would not be proper for this Court to consider the question again. When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was

expressed by this Court in First ITO v. Short Bros. (P) Ltd.[32] and State of U.P. v. Indian Hume Pipe Co. Ltd.[33] That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed. There are two well-recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition."

14. In view of the settled principles of law on the availability of alternative remedy as laid down by the Supreme Court in the above cited cases (supra) this petition cannot be dismissed on that ground.

15. The question of validity of the impugned order dated 19.4.2005 cannot be examined in this case as the validity of the said order is under consideration in a writ petition No. 1931/2005 filed by the petitioner. Thus, this Court does not express any opinion on the validity of the order dated 19.4.2005 which is subject matter of the writ petition No. 1931/2005.

16. For the reasons and the discussions made herein above and the dicta laid down by the Supreme Court in various cases (supra) the order of removal dated 25.4.2005 is bad and is quashed.

(127)

17. On the question of back wages, no foundation has been laid to establish the fact that whether the petitioner was gainfully employed elsewhere or not during this period. Even otherwise keeping in view that the termination order has been vitiated not on merit but on account of non-compliance of the statutory provisions before terminating the services of the petitioner, 30% back wages would be sufficient in the interest of justice. The liberty is reserved to the respondents No. 4 and 5 to initiate de novo enquiry on the alleged irregularities, if so advised.

18. The writ petition is partly allowed to the above extent. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur